

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 500 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARCHANABEN @ BANUBEN

AJITKUMAR

Versus

STATE OF GUJARAT

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Appearance:

MR DEEPAK M SHAH for Petitioner

MR TH SOMPURA, APP for Respondent No. 1

MR RAVI R TRIPATHI for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 01/07/97

ORAL JUDGEMENT

1. The matter has a chequered history. The present petitioner-wife, who was the original applicant for herself and her minor son, Hemang, in the Court of learned Judicial Magistrate, First Class, Laktar, district Surendranagar, had earlier approached the Court of learned Chief Judicial Magistrate, Surendranagar, for

getting maintenance under the provisions of Section 125 of the Code of Criminal Procedure. This application was withdrawn in the year 1983 on account of a settlement between the parties. As the arrangement of settlement which depended upon the husband coming to take the wife along with two sureties acceptable to the wife's family did not materialise, the compromise could not be acted upon and that resulted into filing of Criminal Misc. Application No.7 of 1988 in the court of learned Judicial Magistrate, First Class, Laktar, by the wife for herself and for her son, Hemang, who, by that time, had attained the age of 12 years. The husband on his part has filed Hindu Marriage Petition for divorce on the ground of desertion, being H.R.P. No.54 of 1988.

2. The learned Judicial Magistrate decided the matter on 13.12.1991 in favour of the applicants before him and, accordingly, directed the respondent-husband before him to pay Rs.200/- to the wife and Rs.350/- to the minor child, respectively, for their maintenance. Being aggrieved by this order, the husband carried the matter before the learned Sessions Judge, at Surendranagar, by way of Criminal Revision Application No.17 of 1992. This came to be heard by the learned Additional Sessions Judge, who, by his order dated 7.10.1993, accepted the plea of the husband and revised the order in relation to the wife and thereby the order of payment of monthly amount of Rs.200/- passed by the learned Judicial Magistrate, First Class, in favour of the wife came to be set aside. Being aggrieved by this, the present petition has been filed by the wife for herself.

3. In the meantime, the divorce petition came to be tried by the learned Extra Assistant Judge Sunrendranagar, who by his order dated 14.10.1996 was pleased to dismiss the same and it is in this background that the present petition is required to be considered.

4. In the present judgment, the parties will be referred to respectively as "husband" and "wife" and not in relation to their respective position in the pleadings.

5. The main grievance of the wife is only with regard to the dismissal of her prayer for maintenance by the learned Additional Sessions Judge and, therefore, the Court is not required to go into the quantum of the amount of maintenance.

6. What has weighed with the learned Additional

Sessions Judge in deciding Revision Application No.17 of 1992 is that parties had settled the matter between themselves and, therefore, any marital discord or unhappy episodes preceding the date of settlement can be said to have been condoned by both the sides. The learned Judge, therefore, expressed himself to the fact that on and after the date of settlement, if new grounds have arisen, then alone he would go into the matter and would have granted maintenance, if circumstances so warranted.

7. So far as the payment of maintenance under the provisions of Code of Criminal Procedure is concerned, firstly, it is to be seen whether the wife has reasons to live separate from the husband and secondly, whether the husband has neglected to maintain the wife. So far as negligence is concerned, it is patent. Whether the wife has reason to reside separate or not is by now settled on account of the dismissal of the Hindu Marriage Petition by a competent Court. When a competent Civil Court having jurisdiction in the matter comes to the conclusion that the petition based on the ground of desertion is not sustainable, obviously, leaving of the matrimonial house by the wife is not a situation of the making of the wife. Necessarily, therefore, the wife has reasons to stay separate from the husband.

8. No doubt, when the learned Additional Sessions Judge gave his order in the said Revision Application No.17 of 1992, the decision of a competent Civil Court in divorce matter was not delivered. The learned Additional Sessions, therefore, cannot be faulted on that count; nor can he be faulted on the count that he has relied on the well established principle of marital offences and lapses having been condoned on account of settlement.

9. However, what the learned Additional Sessions Judge has lost sight of is about the fact that the so called settlement was never acted upon. Unless it materialised into a reality, mere drawing up of a document cannot have the effect of wiping out the past. If this position is accepted, it would mean that any unscrupulous husband or wife would be prompted to enter into a compromise and thereby wipe out all that have happened previously and then turn around and say that though the agreement is not acted upon, the party aggrieved by non-compliance cannot plead all that precede the agreement.

10. This is against the very tenet of principles underlying relations governing parties *intra vivos* whether it is a contract as understood under the provisions of

the Indian Contract Act, 1872 or otherwise. Viewing the position from the angle of justice, equality and good conscience also, this position cannot be sustained.

11. As noted above, the compromise was never acted upon and the compromise was only to the effect that wife will come back to the matrimonial home provided husband goes to bring her back with two sureties acceptable to the wife and her family members. In this background, the compromise which is made the basis of arguments before the learned Additional Sessions Judge would lose all its importance and significance.

12. This important aspect having lost sight of, I have no hesitation in holding that the learned Additional Sessions Judge has committed grave error in exercise of his jurisdiction, which calls for intervention at the hands of this Court and, accordingly, this application is allowed. The order of the learned Additional Sessions Judge is set aside and the order of the learned Judicial Magistrate, First Class, is restored. The respondent-husband is directed to clear up all the arrears within a period of six months from today and, in the meantime, start paying the maintenance amount regularly starting with the month of July, which he shall clear by 10th August, 1997. It is of course understood that failure on his part to carry out either of these directions shall result into legal consequences as provided under the relevant provisions of the Code of Criminal Procedure. Respondent to pay to the applicant cost of Rs.1000/-. Rule is made absolute accordingly. Direct service permitted.

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